



UTILITY MANAGEMENT HANDBOOK

Air Force Utility Rate Management Team
HQ AFCEA
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UTILITY MANAGEMENT HANDBOOK

The Air Force Utility Litigation Team (ULT) and Utility Rate Management Team (URMT) have prepared this Utility Management Handbook to help Air Force communities, including base-level and MAJCOM civil engineers, contracting personnel and staff judge advocates, address utility issues. The ULT is a group of Air Force lawyers whose fulltime job is assisting judge advocates in utility matters, and is part of the URMT, which includes two engineers specializing in utility matters. This combined legal/engineering team is located in the Air Force Civil Engineer Support Agency (HQ AFCESA) at Tyndall AFB, Florida. Our phone number is DSN 523-6217 or commercial 850-283-6217. We welcome informal calls from installations needing utility advice—no question is too basic. Treat this handbook as a tool to help you decide whether you need to call us.

INTRODUCTION

Because utility issues can be arcane and complex, we have written this handbook in the simplest terms. Our basic goal is to provide you with enough information to enable you to recognize when you have a utility problem and need help—from us. We have prepared this handbook as a brief overview that defines basic terms and concepts, and will help you recognize when you have a utility problem. This handbook is not intended to be a treatise or to answer all of your questions—our goal is simply to help you recognize when to ask questions.

We have also sought brevity, recognizing that Air Force offices are busy places. This is a user-friendly handbook that is jargon-free and—more importantly—brief enough that you have time to read it.

This handbook should help you identify problems but should not be seen as a research reference that will resolve those problems. Once you identify a utility problem, contact us. We are eager to help, and if you want to engage in self-help we have other more comprehensive publications you can use to educate yourself on identified problems.

We recommend that the base civil engineer, installation utility/energy manager and installation utility contracting specialist/officer read this handbook. Installation staff judge advocates have also received copies of this handbook, and base civil engineering, judge advocate, and contracting personnel should work together resolving utility issues.

Again, if you have any questions, please call us at DSN 523-6217, commercial 850-283-6217.

UTILITY MANAGEMENT HANDBOOK

WHO WE ARE

Together, the lawyers on the ULT and two engineers at AFCESA form the Air Force Utility Rate Management Team (URMT). The URMT addresses not just utility litigation but the entire utility rate management process. The ULT's and URMT's primary responsibility is to help Air Force bases get reliable utility service at the lowest cost.

WHAT ARE UTILITY SERVICES?

For purposes of this handbook, the term *utility service* means the furnishing of electricity, natural or manufactured gas, water, sewage treatment, thermal energy, chilled water, steam, hot water, or high-temperature hot water. It does not include cable television or telephone communication services.

WHY YOU SHOULD CARE ABOUT UTILITY SERVICES

Quite simply, you should care because of costs. Utility service costs are paid out of O&M funds (usually MAJCOM O&M funds) and can be a substantial expense and drain on those funds. O&M funds spent on utilities are funds not available for other mission-essential tasks.

These days, as fossil-fuel costs soar, there is an ever-increasing focus on energy use/conservation and avoiding skyrocketing costs for energy. One of the things we do at the URMT is work on renewable power issues, and we are happy to discuss renewable power options that may be applicable at your installation to meet conservation and renewable power goals and save utility dollars.

WHAT YOU CAN DO: BECOME UTILITY-CONSCIOUS

Utility costs often simply reflect the area cost of living, with high-cost regions generally having high-cost utilities as well. However, for a number of reasons, it is possible that the installation's utility costs will be out of line with the region's cost of living. If so, that should be a red flag and you should be aware that there may be avenues of relief for the installation. If you think your installation's utility costs are too high for any reason, please contact us. Our goal in this handbook is to help you identify the situations where the installation's utility costs are too high.

It is a good idea to be utility-conscious and have a sense of whether the installation's utility costs are a concern, either because they are consistently high or because they are climbing faster than the rate of inflation. You should have a sense of the installation's utility bills and how they compare to the bills for prior years. We can help you gather that information. We discuss below some of the ways that you can become more utility-conscious. But before we turn to that discussion, we need to give you some background.

UTILITY MANAGEMENT HANDBOOK

HOW THE AIR FORCE BUYS UTILITIES

Rules and Regulations. There are numerous rules and regulations that govern the acquisition and management of utility services at Air Force bases. They include the Federal Acquisition Regulation (FAR), Part 41; Defense Federal Acquisition Regulation Supplement (DFARS), Part 241; and AFI 32-1061, *Providing Utilities to U.S. Air Force Installations*. These rules are not discussed at length in this handbook—we simply want you to be aware of where the rules are published.

Separate Contracts v. GSA Area-Wide Contracts. There are two common ways that an installation buys utility services: (1) by separate contracts executed by the installation with the local utility; or (2) by a purchase order to the local utility for service under a General Service Administration (GSA) area-wide contract.

Most installations use the first option. Federal procurement regulations provide the installation contracting officer with a selection of clauses to incorporate in the installation utility contract. The contracting officer merely has to select the appropriate clauses. The JAG provides a review similar to JAG review of other contracts and as a general matter there is no original drafting required. The federal procurement regulations that govern utility purchases and provide the utility clauses are found at FAR Part 41 and FAR Part 52.241.

One note of caution: You may encounter an old contract dealing with utility service and there may be some temptation to update it—please call the ULT/URMT before doing anything to update a contract. Some of the old contracts the Air Force has include very favorable terms, and in the process of updating you may lose some of those favorable terms. We would like to review any old contracts to determine whether there are reasons to make any changes.

A few installations elect the second option and use GSA area-wide contracts. In many areas, GSA has negotiated a blanket utility service contract with the utility for service to all federal agencies and installations in the area. Each federal agency (both DOD and others) may use an authorization and order against this GSA area-wide contract for service using an existing rate schedule or any service negotiated to fit the needs of the base.

Another note of caution: We recommend you discuss with the ULT/URMT the proposed use of a GSA areawide contract because installations are not required to accept the entire GSA contract "as is." The installation is free to modify any provision in the area-wide contract or negotiate any additional or supplemental terms and conditions that might better fit the installation's needs or put the installation in a better position than the basic GSA area-wide contract. The ULT/URMT can assist in developing these supplemental conditions.

There have been occasions when a utility has refused to sign a written utility service contract. Under these circumstances, and assuming the installation has no other possible supplier, the installation orders the utility service without a written contract and simply pays the bill each month at the established "tariff" rates, i.e., the rates established by the local regulatory body. When an installation encounters a utility that resists use of the standard federal contract language, it should report the

UTILITY MANAGEMENT HANDBOOK

matter to the ULT. GSA has threatened to sue some utilities that have sold federal agencies utility service but refused to accept standard federal contract language. In at least one case, GSA persuaded a recalcitrant utility to accept necessary contract provisions.

Sole-source v. Competition. Historically, utility services contracts were negotiated on a sole source basis, on the theory that it was impracticable to secure competition. While that is probably still true for water and sewer contracts, it is becoming less true for gas and electric contracts. The latter two industries are becoming more competitive. Although the majority of Air Force electric and gas services are still sole source, an increasing number of bases have been able to reduce their utility bills by using competition and getting several suppliers to bid for the opportunity to supply electric and gas service. Whether your installation can participate in this trend depends heavily on state law, and state laws are in flux across the nation. If electric and gas rates are a concern at your installation, contact us and we can look into your options. Moreover, since the rules are changing, do not assume that last year's answer is still valid (e.g., even if your state did not allow competition last year, it may do so this year or next).

A BRIEF OUTLINE OF THE UTILITY RATE MODEL

While certain segments of the utility industry are becoming competitive, and prices in those segments result from competition rather than rate regulation, a large portion of base utility rates are still the result of “cost of service” regulated rate determinations. While this handbook does not seek to make you a utility rate expert, we do hope to provide a general overview so you can understand the basic process.

Basically, cost of service utility rate-making has two steps:

- 1) Calculate the total amount of costs that the utility is allowed to charge (in effect, all of the costs of providing service to everyone); and
- 2) Assign or allocate to each customer that customer's “fair” share of these total costs.

The first step (sometimes called the “revenue requirement” step) calculates the total costs that the utility incurs, including operating and maintenance costs, taxes, cost of debt and a return on the investment that the utility has made in order to provide service. The second step (called “rate design”) assigns these costs to the various customers, based on a number of methods—each seeking to assign to the customer its fair share of the total costs based on the portion of the costs that are caused by that customer, and to produce a rate that collects that fair share from each of the various customers in question.

The Air Force generally needs to be represented at the significant events in this process, but particularly in the second step in the ratemaking process. The reason is simple. For the first step in the ratemaking process, our interests are basically the same as the interests of other customers. All the customers want to make sure the total amount of costs is kept to a minimum. So, for the first portion of the process, we can sometimes rely on other customers to protect our interests. However, for the second step in the process, i.e., the assignment to each customer of its fair share of the total

UTILITY MANAGEMENT HANDBOOK

costs, our interests will not be the same as other customers. The process of assigning to each customer its fair share of costs will produce tension between the various customer groups. The other parties' idea of "fair" will be based on their interests, not ours. Self-interest will encourage them to shift costs to us rather than to themselves. Hence, in this step the other customers will not be on our side and we have to be present to protect our interests. Anyone who has ever missed a staff meeting and later found out they were chairing an undesirable committee can understand this point, or as a lawyer once commented: "If you are not at the table, you are on the menu."

A LITTLE MORE DETAIL ON HOW TO MANAGE UTILITY SERVICES AT YOUR INSTALLATION

All CONUS installations should have a utility team (see AFI 32-1061, paragraph 1.4). The utility team includes representatives from civil engineering, contracting, and legal. Each member of the installation utility team has a different role and the members should have a cooperative relationship.

The engineer provides the technical support, which includes such things as identifying the base's utility needs, future loads, and adequacy of present or proposed utility service. Under AFI 32-1061, at all CONUS installations the utility engineer is required to maintain utility management brochures for every one of the installation's utility contracts (see AFI 32-1061, paragraphs 1.7.5 and 2.1). The contracting and legal members of the utility team should check these brochures annually (see AFI 32-1061, paragraph 2.15). The information in these brochures is critical if reporting proposed rate hikes to the ULT on very short notice.

As described in AFI 32-1061, Attachment 2, the brochures should contain information such as:

- Copy of customer classifications and rate schedules;
- Utility company annual financial reports to stockholders;
- Newspaper stories about the utility;
- Summaries of prior rate increases and interventions; and,
- Summaries of service history to the base by the utility, including any previous problems or issues.

The contracting representative negotiates with the utility, with the support and advice of the engineering and legal representatives, and executes the documents necessary to procure reliable utility service at the lowest possible cost.

The legal representative provides advice to the contracting officer and engineer representatives, and has four primary responsibilities:

- 1) Review utility contracts and contract modifications for legal sufficiency, analyze any disputes, and recommend an acquisition strategy;
- 2) Review the utility contract brochures in the engineering office annually;
- 3) Report proposed utility rate increases to the ULT; and

UTILITY MANAGEMENT HANDBOOK

- 4) Represent the government, or assist in representing the government, in opposing any proposed rate increases.

The legal office may find it useful to maintain the following information on each regulated utility:

- Name and address of the utility's regulatory body and a copy of that regulatory body's procedural rules;
- Name and address of the regulatory body's filing clerk, and the filing fees, if any;
- Name, phone number, and address of the utility's general counsel or private law firm;

BECOMING UTILITY-CONSCIOUS

We mentioned above the wisdom of becoming utility-conscious. The first step in becoming utility-conscious is to be aware of the installation's utility bills, how those bills compare to prior years, and how those bills compare to those of similarly situated customers. There are a number of time points where it typically pays for the base utility team to convene a "think tank," either alone or with the assistance of the ULT and URMT, to explore alternatives that might produce utility savings. These time points are as follows:

- The existing utility contract is up for renewal. The questions you should be asking at this stage are: Should that contract be renewed? Can you get other utilities to bid on the service? Is electricity available from another source? Are you entitled to cheaper power from the federal government? Is there a decent chance that you can compel the local utility to transmit power from another source? What is the state law on retail transmission of electricity? Does the state allow retail competition? Can you negotiate better terms with the local utility? Is there a threat of base closure that may give you more leverage? (Obviously you need to be discreet in discussing base closure, but sometimes we don't have to mention it—we just have to use the leverage it gives us. That leverage comes from the fact that the utility will be more attentive to a customer who might be going elsewhere.)
- The base expands and new or expanded utility service is required.
- The state legislature passes new laws on retail transmission or retail competition. That legislative action should trigger an additional question: Can you take advantage of the transition? Even if we do not want to seek out retail transmission or retail competition, we may want to use the possibility of new service to negotiate a better deal.
- The utility files a proposed rate increase with the state utility commission.
- The utility files for a rate change—not a rate increase, but a new rate design allocating the existing total cost of service to different customers. Here the question is: Will the Air Force be treated poorly in the shifting of costs among the various customers, so that we are now paying more than our fair share?

CONSERVATION AND DEMAND SIDE MANAGEMENT

An installation can always reduce its utility costs by simply using less, i.e., conservation. The utility world has a number of models for dealing with conservation. They are driven by the fact that some

UTILITY MANAGEMENT HANDBOOK

conservation is more valuable than other conservation. For example, if the installation can avoid using power at peak times, that can be very valuable to the utility (much more valuable than avoiding using power at off-peak times) and the installation should seek to be compensated and share in that value. This process is called Demand Side Management (DSM) and it includes various forms of conservation and switching fuels. Additionally, there are some contract vehicles available for DSM programs that can be very useful to your installation. These programs are called Utility Energy Savings Contract (UESC) and Energy Savings Performance Contracts (ESPC). We are happy to discuss the specifics of these programs with you: DSN 523-6217, commercial 850-283-6217.

DEALING WITH PENDING RATE INCREASES

Finding Out About Potential Rate Increases. The installation utility team must keep an “ear to the ground” to know when a rate increase proposal is being prepared. There are several ways the utility team can learn of a possible rate increase. The contracting officer or engineer should ask their counterpart at the utility company about any proposed rate increase request (or any proposed action by the utility that could have a significant impact on the base) every time they talk to the utility about any issue. At a minimum, each time the team performs the annual review of the base utility brochure/contract, a team member should contact the utility and ask if there is any proposed rate increase request (or any upcoming change) in the works. Most utility contracts require the utility to notify the installation of any proposed rate increase (although compliance is sometimes spotty). For those installations where a notice provision is not part of the utility service contract, the contracting officer should attempt to modify the contract to get such a provision added. Another source is the local media, which is often quick to learn of utility actions. Finally, for some states the ULT/URMT may have its own sources of information and may advise the installation of a proposed rate increase.

Notifying ULT/URMT. If you learn or suspect that there is a rate increase or rate change being prepared, the installation utility attorney must promptly notify the ULT/URMT of that proposed increase or change:

- If the increase or change might result in an increase in electric or gas costs of over \$300,000 per year;
- If the increase or change might result in an increase in water or sewer costs of over \$200,000 per year; or
- If any proposed rate increase appears to be unreasonable, unjustified or discriminatory to the Air Force (see AFI 32-1061, paragraph 2.13.3.3).

When in doubt call the ULT/URMT.

Information ULT/URMT Will Need and Time Sensitivity. The ULT/URMT will need background information from the base utility brochures discussed above (so the base attorney should have these handy). The ULT/URMT will need to know whether there has been a rate filing (including the date of filing and the deadline for intervening) and, if not, when the utility expects to file its rate case. In most states, intervenors have only **30 days** to respond to a company’s request for a rate increase. In

UTILITY MANAGEMENT HANDBOOK

some states the time period is as short as **10 days**. If the Air Force misses the deadline, there is a substantial risk that we will not be allowed to intervene and will have effectively forfeited our right to challenge the rate increase.

The ULT will also need to know some of the technical data related to the proposed rate increase request. Much of the technical data will be contained in AF Form 3550, *Annual Utility Service Contract Review for Electric Service*, AF Form 3551, *Annual Utility Service Contract Review for Gas Service*, and AF Form 3552, *Annual Utility Service Contract Review for Water and Sewage Service*, that each base prepares. Other significant data will be contained in the base utility management brochure maintained by the base utility engineer.

HOW WE DETERMINE WHETHER TO INTERVENE IN A RATE CASE

After the ULT/URMT receives notification of a proposed rate increase, the first step we take is to determine whether the Air Force is the lead agency for rate litigation in the case. To intervene before any regulatory agency on a utility matter, the ULT/URMT must receive delegated authority from the General Services Agency (GSA). This delegation is required because GSA is the lead federal agency on matters relating to the procurement of utility services by federal agencies. (This is a great simplification of a complicated topic.)

Usually, the federal agency that is both interested and has the biggest installation in a utility's service territory is authorized by GSA to intervene on behalf of, and represent the interests of, the federal agencies in that area. What that means is that an Air Force base may be represented by the litigation efforts of non-Air Force utility litigators. In some parts of the country this might be the Navy (the Navy is the lead agency in California), the Army (the Army is lead agency in many places on the East Coast), or some other federal agency, such as the Department of Energy.

If another agency is representing Air Force interests in a case, we will monitor the proceedings and coordinate with the MAJCOM and base for any support that the other agency attorneys may need. However, those other attorneys may contact you directly for information, as well. If you have any concerns about a rate proceeding where the Air Force is not the lead agency, please don't hesitate to contact the ULT.

If the Air Force is the lead agency in a case, we will review the information and intervention recommendation from the base and discuss whether to take the next step: having AFCESA's rate expert consultant conduct a "Phase I" analysis, a detailed analysis of the proposed rate increase. The Phase I analysis will review the utility's expenses and assets, evaluate the proposed rate increase, and recommend whether the Air Force should intervene in the rate proceeding and challenge the proposed rate increase. The money for the Phase I analysis (approximately \$10,000) is usually funded by AFCESA. However, if the money is not available from AFCESA, the base or MAJCOM may have to fund this expense. The decision whether to proceed with a Phase I analysis is made after discussion with the base, ULT, the MAJCOM, and AFCESA.

UTILITY MANAGEMENT HANDBOOK

The general rule is that the Air Force does not intervene unless there is a strong likelihood that the Air Force will realize a substantial payback, i.e., savings or cost avoidance that significantly exceeds the costs associated with the intervention. If such a payback is probable then intervention is likely. Historically, the ULT has achieved about a 25 to 1 payback (cost benefit ratio) in utility interventions. However, there may be cases that have smaller financial risk but involve substantial issues or precedents. We may intervene in those cases as well, even if the payback is not as significant, if we believe the issue is important enough. Historically, the Air Force has avoided over \$50 million dollars in increased costs annually thanks to ULT/URMT interventions, settlements and support to installations. The decision to intervene will be made after discussions with the base and MAJCOM CE and JA staffs.

A typical utility rate case will take from 6 to 18 months to complete. There are a number of procedural steps that vary from state to state. However, the process usually includes some settlement discussions and, if settlement is not reached, a relatively formal administrative litigation.

CONCLUSION

This is a specialized area of the law, and we do not expect this handbook to make you an expert. Our goal is to produce a brief overview that defines basic terms and concepts, and will help you recognize when you have a utility problem. If you think you might, or if you just want to know more—call us: DSN 523-6217, commercial 850-283-6217.